

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Inquiry Concerning Deployment of Advanced
Telecommunications Capability to All
Americans in a Reasonable and Timely Fashion

WC Docket No. 17-199

MOTION FOR EXTENSION OF TIME TO FILE INITIAL AND REPLY COMMENTS

New America’s Open Technology Institute, American Library Association, Center for Democracy & Technology, Center for Media Justice, Center for Rural Strategies, Common Cause, Computer & Communications Industry Association (CCIA), INCOMPAS, National Consumer Law Center (on behalf of their low-income clients), National Hispanic Media Coalition, OpenMedia, Open MIC (Open Media and Information Companies Initiative), and Public Knowledge (“Movants”) respectfully request an eight-week extension of the deadline for comments in the above-captioned proceeding. Movants recognize that “[i]t is the policy of the Commission that extensions of time shall not be routinely granted.”¹ Given the enormous impact that this proceeding could have on the Federal Communications Commission’s (“Commission”) role in regulating broadband internet access service (“BIAS”) providers and promoting broadband deployment, the direct relevance of questions posed in this proceeding to those posed in other open proceedings, and the type of data and analysis sought by the Commission, an extension is appropriate and would improve the quality of initial and reply comments submitted in the proceeding. Such an extension would also not cause any undue delay in the Commission’s deliberations. If anything, the extension would allow the Commission to consider the record in

¹ 47 C.F.R. § 1.46(a).

this proceeding holistically with the records in related proceedings for which comment cycles are ongoing.

I. This proceeding could have an enormous impact on the Commission’s role in regulating broadband internet access service providers and promoting broadband deployment.

The annual §706 inquiry is a vital proceeding for and has an enormous impact on many other Commission proceedings. The Commission is required by statute to conduct an annual inquiry to determine “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”² This inquiry is important in its own right, as it provides the Commission with data and analysis to assess the degree to which the availability of broadband internet access service (“BIAS”) is improving over time.³ That data and analysis is also vital to the agency’s guiding principle of making available a “rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”⁴ However, it also provides an important threshold for Commission authority.⁵ The D.C. Circuit found in *Verizon v. FCC* that “the Commission [...] reasonably interpreted section 706(b) to empower it to take steps to accelerate broadband deployment if and when it determines that such deployment is not ‘reasonable and timely.’”⁶ In the context of Lifeline, the Tenth Circuit similarly found that the “FCC reasonably construed section 706(b) as an additional source of support for its broadband requirement.”⁷ These decisions demonstrate that the section serves as an independent grant of authority.

² 47 U.S.C. § 1302(b).

³ 47 U.S.C. § 1302(d)(1) (defining “advanced telecommunications capability” as “any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”).

⁴ 47 U.S.C. § 151.

⁵ 47 U.S.C. § 1302 (b) “If the Commission’s determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”

⁶ *Verizon v. FCC*, 740 F.3d 623, 641 (D.C. Cir. 2014).

⁷ *In re FCC 11-161*, 753 F.3d 1015, 1049-54 (10th Cir. 2014).

Certainly the Commission is not obligated or even expected to come to a particular finding in order to utilize a statutory grant of authority (and indeed the Chairman and Commissioner O’Rielly have expressed considerable skepticism toward the use of §706 authority in various contexts⁸). However, disagreement about the reach of §706 does not discount the importance or influence of the ultimate result of this proceeding. The Commission has undertaken important proceedings to promote the deployment of wireline and wireless networks and is considering next steps for promote competition in the multi-tenant environments.⁹ It is important that the Commission gather sufficient and complete input on its §706 NOI—given the statutory import that §706 has for affording the Commission additional authority to address the barriers to broadband deployment.

It is evident that no matter the finding, the ultimate resolution of this inquiry will have reverberations across the communications sector, and the Commission should allow ample time for commenters to participate.

II. The questions raised in this proceeding are directly tied to questions posed in other proceedings for which comment cycles are currently in progress.

In addition to broad implications of the result of this proceeding, the questions raised therein are directly tied to questions posed in other, related proceedings. As those proceedings also have open comment windows that extend in some cases into October, it would be reasonable for the Commission to extend the deadlines in this proceeding to allow adequate time for

⁸ Dissenting Statement of Commissioner Ajit Pai at 52-57, *Protecting and Promoting the Open Internet*, GN Dkt. No. 14-28, https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A5.pdf; Dissenting Statement of Commissioner Michael O’Rielly at 1-2, *Protecting and Promoting the Open Internet*, GN Dkt. No. 14-28, https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A6.pdf.

⁹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, 32 FCC Rcd 3266 (Apr. 21, 2017); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking and Notice of Inquiry*, 32 FCC Rcd 3330 (Apr. 21, 2017); and *Improving Competitive Broadband Access to Multiple Tenant Environments, Notice of Inquiry*, 32 FCC Rcd 5383 (June 23, 2017).

commenters to fully consider all of the related issues.

Most notably, the Commission's pending proceeding to reconsider the *2015 Open Internet Order* includes multiple questions related to the scope of authority for alternative rules under §706.¹⁰ In addition, the NPRM in that proceeding asks for extensive comment on the current state of broadband deployment and availability.¹¹ Over 22 million people have commented in that docket, and many have provided lengthy analysis on the issue of broadband access, and many more comments were submitted this week as the Commission's reply comment deadline passed. In addition, the Commission is responding to a Freedom of Information Act ("FOIA") request from the National Hispanic Media Coalition ("NHMC") on a rolling basis and its response is not yet complete, which could result in more material for consideration in the §706 NOI proceeding.¹² Because many organizations and companies have data, information, and analysis that will benefit the Commission in both proceedings (and many may want to file in both proceedings), the six-day window between the reply comment deadline in the open internet proceeding and the initial comment deadline in the instant proceeding is wholly insufficient. Six days is not enough time for commenters to sift through the enormous volume of comments, identify any that would be relevant to the Commission's §706 NOI, and incorporate those arguments into the initial §706 NOI comments due September 7, 2017.

The open internet docket is not the only relevant open proceeding. The Commission adopted an FNPRM to consider reforms to the Commission's Form 477 data collection practices on August 3, 2017, and published the proposal in the Federal Register on August 24, 2017. The

¹⁰ *Restoring Internet Freedom, Notice of Proposed Rulemaking*, 32 FCC Rcd 4434, ¶101 (2017).

¹¹ *Id.* ¶¶47, 69.

¹² Press Release, National Hispanic Media Coalition, NHMC Releases New Net Neutrality Documents to the Public Showing Importance of Open Internet Order, Urges FCC to Open New Comment Period to Examine (Aug. 30, 2017) *available at* <http://www.nhmc.org/release-nhmc-releases-new-net-neutrality-documents-public-showing-importance-open-internet-order-urges-fcc-open-new-comment-period-examine/>.

comment deadlines for that proceeding are September 25, 2017, for initial comments and October 10, 2017, for reply comments. The §706 NOI further poses numerous questions related to Form 477 data.¹³ At the very least, it would be useful for commenters in the §706 NOI proceeding to have completed their recommendations in the Form 477 FNPRM proceeding prior to filing their §706 NOI comments. Notably, the eight week extension sought by the Movants would result in the deadline for the §706 falling almost exactly one month after the conclusion of the comment window for the Form 477 FNPRM.

III. The Commission seeks a detailed record that takes considerable time to procure.

Even in its relatively short NOI, the Commission seeks a multitude of data-heavy inputs for consideration. Among other things, it asks for deployment data related to broadband generally,¹⁴ broadband provisioned by satellites,¹⁵ broadband provisioned over mobile networks,¹⁶ and availability of broadband for elementary and secondary schools.¹⁷ Datasets to address the questions posed by the Commission exist in various locations (if at all), and require significant time for synthesis and analysis. Shortchanging this research would result in the provision of less than optimal commentary at the Commission's disposal.

As an organization that has frequently conducted extensive, data-driven analysis on topics from broadband prices and speeds to consumer harms related to interconnection disputes, movant Open Technology Institute is particularly well-situated to comment on the need for

¹³ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, Thirteenth Section 706 Report Notice of Inquiry*, FCC 17-109, GN Dkt. No. 17-199, ¶¶32, 41-44 (“§706 NOI”)

¹⁴ §706 NOI ¶41

¹⁵ §706 NOI ¶42

¹⁶ §706 NOI ¶43

¹⁷ §706 NOI ¶45

additional time to craft thoughtful, data-heavy comments.¹⁸ Even basic research about broadband availability takes some time and resources, and the allocated month for a full comment window, including initial comments and replies, is simply insufficient to gather, analyze, and draw conclusions from the relevant data. This window is particularly challenging given the previously mentioned and similarly data-heavy proceedings related to the open internet and reforms to the Commission's Form 477 process. Spacing out those three proceedings would allow interested parties to comment fully in each proceeding, but also to integrate insights and analysis from each proceeding into the others. Short-changing the process harms the Commission's consideration of important issues and, ultimately, consumers.

In addition, datasets do not always paint a full and accurate picture of the experience of consumers on the ground in communities throughout the country. As Commissioner Clyburn notes in her concurrence to the §706 NOI, “[t]he whole point of this inquiry is to figure out whether consumers across America are getting good broadband. From my conversations around the country, including those I had in Marietta, Ohio last month, too many of our neighbors yearn for affordable, reliable fixed and mobile broadband connections and it is my fear that we continue to short-change consumers in several aspects of this proceeding.”¹⁹ The Commissioner's statement illustrates both the importance of this proceeding at a general level, but also the value of qualitative, on-the-ground information-gathering as a critical component of policy-making.

To the extent that empirical, data-driven analysis takes time, synthesis of diverse experiences across rural, urban, and suburban areas of the country can be even more labor-

¹⁸ Nick Russo *et al.*, *The Cost of Connectivity 2014*, Open Tech. Inst. (Oct. 2014), <https://na-production.s3.amazonaws.com/documents/the-cost-of-connectivity-2014.pdf>; “*Beyond Frustrated*”: *The Sweeping Consumer Harms as a Result of ISP Disputes*, Open Tech. Inst. (Nov. 2014), https://na-production.s3.amazonaws.com/documents/Beyond_Frustrated.pdf.

¹⁹ §706 NOI, at p. 20 (Concurring Statement of Commissioner Clyburn).

intensive, yet just as important. And notably, the qualitative input that captures a truly diverse record requires a truly diverse comment base, and not simply a snapshot of companies and advocates with offices in Washington, D.C. An extension of time in this proceeding would allow for the widest range of viewpoints to be presented to the Commission. The current timeline is likely to preclude participation from organizations outside of the beltway.

IV. A limited extension will not cause undue delay or prejudice for the Commission.

For the reasons outlined above, an extension in this proceeding is not only reasonable, but necessary to ensure a full and complete record on the important questions and issues posed in the docket. While movants understand that there can be benefits to moving expeditiously through a proceeding, as well as the statutory directive in § 706 (b), the stakes here are simply too high to support the brief comment window the Commission has proposed. Whatever delay might be created by an extension, it would be outweighed by a more robust and complete record.

The Commission's rules require that "reasonable time will be provided for submission of comments in support of or in opposition to proposed rules,"²⁰ and similarly that "reasonable time will be provided for filing comments in reply to the original comments."²¹ In this case, reasonableness should be considered in the context not simply of this proceeding in isolation, but as a proceeding inextricably linked to other proceedings, and of exceptionally high importance.

For the foregoing reasons, the Commission should grant the extension requested herein.

²⁰ 47 C.F.R § 1.415(b); *see also* 47 C.F.R. § 1.430 (applying these rules to proceedings on a notice of inquiry).

²¹ 47 C.F.R § 1.415(c).

Respectfully submitted,

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